

**To:** CN=Karl Gustavson/OU=DC/O=USEPA/C=US@EPA[]  
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**From:** CN=Chip Humphrey/OU=R10/O=USEPA/C=US  
**Sent:** Wed 10/31/2012 3:35:06 PM  
**Subject:** \*Confidential: Fw: Enforcement Confidential: Nice article on the Willamette Decision Memo Partial Resolution -LWG.pdf

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[Superfund program](#)

[at around \\$2.2 billion](#)

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[Gunderson LLC](#)

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----- Forwarded by Chip Humphrey/R10/USEPA/US on 10/31/2012 08:34 AM -----

**From:** Deb Yamamoto/R10/USEPA/US  
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**Date:** 10/31/2012 08:33 AM  
**Subject:** Enforcement Confidential: Nice article on the Willamette

Thanks Larry,

It was nice to get some positive press play. We're in the middle of a formal dispute with the PRPs on the human health risk assessment. They are unhappy with the RME/CT scenarios we've identified. The rates, however, are in line with those used elsewhere but some of the PRPs are putting on the full court press saying we're being unreasonable. So they've disputed our RME and CT scenarios and want to spend more time discussing this with us. In addition, when we gave our changes to the risk assessment we told them they were in noncompliance with the AOC because they didn't address all our previous comments and they are disputing our noncompliance determination, as well as our rewrites of the risk assessment.

The formal dispute will be heard by Dan Opalski tomorrow, then he'll make his final ruling. Written information has been submitted; this is the opportunity for the PRPs to make their case orally. Although Dan Opalski has moved on to be the Director of the Office of Water, he's been retained to rule on the dispute. Rick Albright, our new Office Director, will be sitting in on the oral presentations. Dan has

already partially ruled on one process related issue that the PRPs brought up, which is attached below. This issue relates to EPA making the decision to rewrite major portions of the risk assessment, rather than continue back and forth discussions with the PRP Group (LWG) on our comments. We'd already reviewed two previous drafts that weren't sufficient so EPA exercised its option under the AOC to rewrite a lot of the narrative discussion. Without going into a lot of details, the PRPs felt the "process" for working through comments was broken and wanted a new process initiated from here on out.

One last thing. As mentioned below, some of the PRPs had the Brattle Group conduct a phone survey on fish consumption at Portland Harbor. They presented the findings to us last week. At this point we don't see anything new from their presentation that would affect our position on the RME/CTs we've identified in the risk assessment we rewrote. An article came out on this yesterday. Here's the link.

[http://www.oregonlive.com/environment/index.ssf/2012/10/industry-funded\\_study\\_tracks\\_f.html](http://www.oregonlive.com/environment/index.ssf/2012/10/industry-funded_study_tracks_f.html)

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Date: 10/31/2012 05:14 AM  
Subject: Nice article on the Willamette

<http://www.bizjournals.com/portland/blog/2012/10/superfund-study-gets-epas-enviros.html?page=all>  
Superfund study gets EPA's, River Keeper's attention  
Portland Business Journal by Andy Giegerich , Business Journal staff writer  
Date: Monday, October 29, 2012, 2:05pm PDT  
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Travis Williams believes cleaning the Willamette River's Superfund site would, simply, lead more people to eat the river's fish.

Andy Giegerich  
Business Journal staff writer- Portland Business Journal  
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As businesses question how much Willamette River cleanup is needed, per the Environmental Protection Agency's Superfund program, other interests say the process is indeed moving in the right direction.

Those interests include one river-centric environmentalist and the EPA itself, which maintains that there's plenty of proof that the agency used the right measurements to gauge toxicity levels in fish consumed by humans — that's a primary indicator of whether water is polluted.

Bear with me as I provide a trace of background here. At issue is whether federal officials are using relevant data to determine toxicity in fish that are consumed after being caught near the Superfund site. Any changes in the way toxicity is measured in fish caught in the harbor could lower Superfund clean-up costs, which are estimated, at the high end, at around \$2.2 billion.

In last week's paper, I wrote about a study backed by three major waterfront businesses that called for the EPA to reconsider the way it measures fish toxicity. Representatives from Gunderson LLC, Schnitzer Steel Industries Co. and Vigor Industrial LLC contended that the EPA didn't actually interview Willamette River anglers before estimating the degree to which people eat fish caught from the river. The agency instead based its estimates on national and tribal fishing data.

Those companies fear the EPA is creating clean-up remedies and costs on incomplete data.

One point of contention is whether those who regularly consume Willamette River fish eat more resident fish — those inside the Superfund site — a group that includes bass and catfish, or migratory fish such as salmon.

When I wrote the piece, I'd honored an embargo set by the businesses to not release the story until Friday morning. That's two days past my deadline, meaning I couldn't talk to the EPA and environmentalists to get their thoughts.

Since then, I've circled back with the EPA and Travis Williams, executive director of the Willamette Riverkeeper group, who were more than happy to provide more context.

Williams pointed out that he believes a pretext of the new study that only about 78 residents would eat enough resident fish daily to provide meaningful health data is flawed.

"It's important to know that a group of people are eating high quantities of PCB laden fish, which is a key fact that on its own demonstrates a very real need to clean up Portland Harbor," Williams said. "What surveys like this do not do is capture how many other people would likely consume higher quantities of fish from the Willamette if the river was free of contaminants such as PCBs, heavy metals, DDE, and oil based products."

Lori Cohen, the associate director of the EPA's office of environmental clean-up, said the office is still looking into the fish consumption questions before issuing final cleanup rules.

However, she cautioned that more studies could delay the cleanup process. The EPA first deemed the harbor a Superfund site in 2000.

"We're at a pivotal point in the project," she said, noting that the agency has worked with the Lower Willamette Group of business representatives as it considers cleanup options. "I believe we're at a place where we can pull that information together and come up with a plan. We want to get past any disputes. Fish consumption is one important factor in our analysis, but it's one of many factors we need to consider. We don't want to get into a situation where there are more delays."

Cohen added that the EPA also wants to take into account those who are exposed to the river from both the angling and recreational standpoints.

"As the river gets cleaned up, there could be more uses of it," she said.

Dave Harvey, Gunderson's director of health and safety, and Rep. Kurt Schrader, a Democrat who's become engrossed with river clean-up issues, told me last week the businesses have no intention of delaying the cleanup process.

The Superfund designation requires cleanup of the 10-mile Willamette stretch between the Fremont Bridge and Sauvie Island. The designation results from pollution that, for decades, poured into the river from older-line waterfront manufacturers.

Andy Giegerich covers government, law, health care and sports business.